IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8149 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JAYESH JIVRAJ SOLANKI - Petitioner(s)
Versus
COMMISSIONER OF POLICE SURAT CITY & 2 - Respondent(s)

==========

Appearance :
MR BC DAVE for Petitioner(s) : 1,MR KUNAL B DAVE for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
Mr. N.D. Gohil, Asst. GOVERNMENT PLEADER for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 06/07/2006

ORAL JUDGMENT

The petitioner-detenu has filed the present petition challenging his detention order dated

17/03/06 by which the petitioner is detained as a Bootlegger under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as PASA Act].

In the grounds of detention, there is a reference to four cases pending against the petitioner. These cases are registered against the petitioner under the provisions of the Bombay Prohibition Act for dealing in English liquor. The detaining authority has found that the activities of the petitioner are such that it will prejudicially affect public health, and therefore, the detenu is required to be taken in preventive detention under the provisions the PASA Act.

Learned advocate for the petitioner submitted that except these four cases, there is no credible material to indicate that the activities of the petitioner are prejudicial to public health. He further submitted that statement of not even a single witness has been recorded in the matter under section 9(2) of the PASA Act. It is also submitted by the learned advocate for the petitioner that there is no credible material to show that by dealing in the so called liquor, the petitioner has tried to harm public health. He further submitted that there is no report of any laboratory to the effect that consumption of the so called liquor is dangerous to public health so as to attract the provisions of the Act.

Learned advocate for the petitioner has relied

upon the decision of the Supreme Court in District Collector, Ananthapur and another vs. V. Laxmanna reported in 2005 AIR SCW 1822 : (2005) 3 SCC 663. In the aforesaid case, the Supreme Court has observed as under in paragraphs 7 and 8 :

> "7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation.
>
> 8. Therefore, while holding that dealing with arrack which is dangerous to public health would become an act prejudicial to the maintenance of

> public order attracting the provisions of the Act. It must be held that it is obligatory for the detaining authority to provide the material on which it has based its conclusion on this point. Therefore, we are in agreement with the High Court that if the detaining authority is of the opinion that it is necessary to detain a person under the Act to prevent him from indulging in sale of goods dangerous for human consumption the same should be based on some material and the copies of such material should be given to the detenu."

In my view, there is nothing to show that the activities of the petitioner are likely to prejudicially affect public health. There is no credible material from which it can be said that the activities of the petitioner are prejudicial to public health. The petition is required to be allowed as from the available records it cannot be said that the activities of the petitioner are against public health. The offences registered against the petitioner are under the Bombay Prohibition Act. In that view of the matter, at the most it can be said that the petitioner has violated law and order, and not public order.

Learned Assistant Government Pleader is not in a position to substantiate his say that the activities of the petitioner are prejudicial to public health or that the petitioner has violated public order.

In the result, the petition is allowed. Order of detention passed against the detenu dated 17.03.2006 is quashed and set aside. The detenu is ordered to be released forthwith unless he is required in connection with any other offence. Rule is made absolute, with no order as to costs.

Learned advocate for the detenu makes a voluntary statement that the detenu will not enter the limits of Police Commissionerate area of Surat City upto 30th September 2006 except for attending the criminal case or complying with the conditions of bail, if any granted. This voluntary statement of learned advocate for the petitioner is recorded. It is for the Learned Assistant Government Pleader to inform the concerned authorities about this voluntary statement and it is for the concerned authorities to monitor the same.

Rule is made absolute, with no order as to costs.

[P. B. MAJMUDAR, J.]

mathew